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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

JOINT SUBMISSION RE: SEALING
PORTIONS OF ORDER ON
PLAINTIFFS' MOTION FOR
SANCTIONS FOR DISCOVERY
MISCONDUCT (DKT. 588)

Referral: Hon. Susan van Keulen, USMJ

Case No. 4:20-cv-03664-YGR-SVK

JOINT SUBMISSION RE: SEALING PORTIONS OF ORDER ON PLAINTIFFS'
MOTION FOR SANCTIONS FOR DISCOVERY MISCONDUCT (DKT. 588)

1 May 31, 2022

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th
6 Floor 280 South 1st
Street San Jose, CA
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7 Re: Joint Submission Re: Sealing Portions of Order on Plaintiffs' Motion for
8 Sanctions for Discovery Misconduct (Dkt. 588) in Response to Dkt. 589
9 *Brown v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (N.D. Cal.)

10 Your Honor:

11 Pursuant to Your Honor's May 20, 2022 Redaction Order (Dkt. 589) regarding sealing the
12 Order on Plaintiffs' Motion for Sanctions for Discovery Misconduct (Dkt. 588), Plaintiffs and
13 Google LLC ("Google") jointly submit this statement.

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1 Google respectfully seeks to seal the following portions of the Order on Plaintiffs' Motion
 2 for Sanctions for Discovery Misconduct (Dkt. 588) ("Order"), which contain Google's confidential
 3 and proprietary information regarding highly sensitive features of Google's internal systems and
 4 operations that Google does not share publicly, including various types of Google's internal projects,
 5 identifiers, data signals, and logs, and their proprietary functionalities, as well as internal metrics,
 6 that Google maintains as confidential in the ordinary course of its business and is not generally
 7 known to the public or Google's competitors. This information is highly confidential and should be
 8 protected.

9 This Administrative Motion pertains to the following information contained in the Order:

10 Document	11 Portions to be Filed Under Seal	12 Party Claiming Confidentiality
13 Order on Plaintiffs' Motion for Sanctions for Discovery Misconduct (Dkt. 588)	14 Portions of Order at: 15 Pages 3:2, 3:23, 3:26 16 Portions of Exhibit A to Order at: 17 Pages 4:5, 4:8-9, 4:19-20, 5:3, 5:5, 5:17, 18 6:11, 6:20, 6:23, 7:2-26, 13:1-3, 13:10-13, 20 16:10-11, 17:16, 17:20, 19:5, 19:7, 21:9, 21 21:11, 21:13-15, 21:17, 21:19, 21:23-24, 22 22:2-3, 22:10, 22:12, 22:17, 23:6, 24:2, 23 24:18, 26:3-5, 27:24, 36:8-10, 36:12, 36:15, 24 36:17, 36:26, 37:3, 37:7, 37:14	25 Google

26 The parties conferred on the proposed redactions to the Order. Plaintiffs take no position on
 27 sealing the proposed redactions.

28 **I. LEGAL STANDARD**

29 The common law right of public access to judicial records in a civil case is not a
 30 constitutional right and it is "not absolute." *Nixon v. Warner Communications, Inc.*, 435 U.S. 589,
 31 598 (1978) (noting that the "right to inspect and copy judicial records is not absolute" and that
 32 "courts have refused to permit their files to serve as reservoirs of . . . sources of business information
 33 that might harm a litigant's competitive standing"). Sealing is appropriate when the information at
 34 issue constitutes "competitively sensitive information," such as "confidential research,
 35

1 development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*,
 2 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d
 3 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of
 4 materials for many types of information, including, but not limited to, trade secrets or other
 5 confidential research, development, or commercial information”).

6 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”
 7 STANDARD AND SHOULD ALL BE SEALED**

8 Courts have repeatedly found it appropriate to seal documents that contain medical
 9 information or “business information that might harm a litigant’s competitive standing.” *Nixon*, 435
 10 U.S. at 589-99; *see also Turner v. United States*, 2019 WL 4732143, at *9 (finding good cause to
 11 seal “confidential medical information”). Good cause to seal is shown when a party seeks to seal
 12 materials that “contain[] confidential information about the operation of [the party’s] products and
 13 that public disclosure could harm [the party] by disclosing confidential technical information.”
 14 *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014).
 15 Materials that could harm a litigant’s competitive standing may be sealed even under the
 16 “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*,
 17 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the
 18 ‘compelling reasons’ standard where that information could be used to the company’s competitive
 19 disadvantage”) (citation omitted).

20 Here, the Order comprises confidential information regarding highly sensitive features of
 21 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 22 information provides details related to the various types of Google’s internal projects, identifiers,
 23 data signals, and logs, and their proprietary functionalities, as well as internal metrics. Such
 24 information reveals Google’s internal strategies, system designs, and business practices for
 25 operating and maintaining many of its important services while complying with legal and privacy
 26 obligations.

27 Public disclosure of the above-listed information would harm Google’s competitive standing
 28 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of

1 Google's proprietary systems, strategies, designs, and practices to Google's competitors. That alone
 2 is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No.
 3 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google's motion to seal
 4 certain sensitive business information related to Google's processes and policies to ensure the
 5 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,
 6 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales
 7 data because "disclosure would harm their competitive standing by giving competitors insight they
 8 do not have"); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8,
 9 2013) (granting motion to seal as to "internal research results that disclose statistical coding that is
 10 not publicly available").

11 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 12 compromise Google's internal systems and data structures. Google would be placed at an increased
 13 risk of cybersecurity threats, and data related to its users could similarly be at risk. *See, e.g., In re*
 14 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing "material
 15 concern[ing] how users' interactions with the Gmail system affects how messages are transmitted"
 16 because if made public, it "could lead to a breach in the security of the Gmail system"). The security
 17 threat is an additional reason for this Court to seal the identified information.

18 The information Google seeks to redact is the minimal amount of information needed to
 19 protect its internal systems and operations from being exposed to not only its competitors but also
 20 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
 21 The "good cause" rather than the "compelling reasons" standard should apply but under either
 22 standard, Google's sealing request is warranted.

23 **III. CONCLUSION**

24 For the foregoing reasons, Google respectfully requests that the Court seal the identified
 25 portions of the Order.

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Respectfully,

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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission. Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document.

Dated: May 31, 2022

By */s/ Andrew H. Schapiro*

Andrew H. Schapiro

Counsel on behalf of Google LLC